

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 1400 OF 2007
WITH
CIVIL APPLICATION NO. 4213 OF 2007**

M/s New India Assurance Co. Ltd.,
having its Regd. And Head Office at
The New India Assurance Building
87, M.G.Road Fort, Bombay, Branch Office
at Jalgaon and Divisional Office
Ajay Engg. Compound, Adalat Road,
Aurangabad 431 005 through it's
Divisional Manager & Constituted
Attorney Mr. Hialal Namdeo Vispute.

**..APPELLANT
(Orig. Ind
Respondent)**

VERSUS

1. Ashabai Yuvraj Khewalkar,
Age; 23 Years, Occ; Household work,
2. Darpan s/o Yuvraj Khewalkar,
Age; 2 years, Minor
U/G. of No. 1 above mother.
3. Sow. Vatsalabai Ramkrishna Khewalkar
Age; 44 years, Occ; Household work,
4. Ramkrishna s/o Yada Khewalkar,
Age; 46 years, Occ; Service,

**(ORIG.
CLAIMANTS)**

All r/o Sakali, Tq. Yawal, Dist. Jalgaon

**RESPONDENT
NOS. 1 TO 4**

5. Ayub Bashir Bhagwan,
Age; 30 years,
R/o; Kurduwadi, Tq. Mhada, Dist; Solapur

**ORIGINAL
RESPONDENT
NO. 1**

...
Advocate for Appellant : Mr. V.N.Upadhye
APP for Respondent Nos. 1 to 4 : Mr. G.N. Wani
All respondents are served.

...
CORAM : VINAY JOSHI, J.
DATE : 17.01.2022.

JUDGMENT :

1. This appeal is directed against the judgment and award dated 05th December 2006, passed by the Motor Accident Claims Tribunal, Jalgaon, in M.A.C.P. No. 66 of 2000, whereby, total compensation to the tune of Rs. 4,18,000/- has been awarded in death claim.

2. Legal heirs of the deceased Yuvaraj, who died in vehicular accident, have approached to the Tribunal for grant of compensation. It is claimants' case that on 11.12.1998, the deceased Yuvaraj, along with one Ravindra were proceeding on Savada Faijapur road by ridding on motorcycle. Around 8.00 p.m., while they came near village Savada, their motor cycle dashed to one stationary truck bearing registration No. MH-13/B-0933 from behind. The truck was negligently parked in the center of the road, without putting parking lights or any signal. As a resultant and impact of said dash, Yuvaraj sustained serious bodily injuries, in which he died on the spot. It was the claimants' case that due to rash and negligent act on the part of the truck driver an accident occurred.

3. The claim was resisted by the appellant Insurance Company on the point of negligence and quantum. The Tribunal after considering oral evidence and police papers concluded that due to negligence of truck driver accident occurred and accordingly, awarded compensation as aforesaid mentioned.

4. The appellant Insurer has primely assailed the impugned judgment on the point of negligence. It is contended that since the motor cycle dashed to stationary truck, therefore, it was the case of contributory negligence. It is contended that the truck was parked at the side of the road, therefore the deceased was negligent. On the point of negligence the claimants have examined pillion rider Ravindra, who was an eye witness of the occurrence. It is his evidence that at the relevant time, he was proceeding on motorcycle along with deceased Yuvaraj. Around 8.00 p.m. while Yuvaraj was riding motorcycle, it was dashed to one truck, which was parked negligently at the midst of the road. He deposed that the parking lights were not on, nor any signal or sign was shown about the parking of the truck on the road.

5. In order to substantiate the evidence of Ravindra, the claimants had produced police papers. The report has been lodged by Police Head Constable, blaming the truck driver and accordingly

an offence has been registered. As per the report, the truck was parked in negligent manner on the road, without indicators, which resulted in to accident. Particularly panchanama of the scene of offence was seen. Though the insurer stated that the truck was parked at the side of the road, however, the panchanama no where discloses that the truck was at the left side of the road. On the contrary, the police report indicates that the truck was parked on the road in dangerous condition. Pertinent to note that, the road was quite narrow having only 18" feet width. An accident occurred at 8.00 p.m., meaning thereby during dark hours. There is no contrary evidence to suggest that the truck driver had taken proper care by putting signals for other vehicles about parking of truck on the road. Accident took place at the outskirts of village and therefore, it is difficult for smaller vehicles to take note of parked truck during night hours. Therefore, the Tribunal has rightly concluded that due to sole rash and negligent act of truck driver accident occurred.

6. On the point of quantum, it has come in the evidence that the deceased Yuvaraj was doing the work of diesel mechanic and for that purpose the evidence of Baliram Pawar has been led. The claimants have produced the certificate to show that the deceased has completed Diesel Mechanic Course. The Tribunal has considered the notional income of the deceased @ Rs. 3,000/- p.m., which is

quite appropriate. Considering the age of the deceased the multiplier of '17' was used, which cannot be faulted with.

7. On re-examination of entire material it is evident that the Tribunal has rightly decided the point of negligence and quantum, which calls no interference. In view of that appeal carries no merit, hence dismissed.

8. Pending Civil Application No. 4213 of 2007 is disposed of.

(VINAY JOSHI)
JUDGE

mahajansb/